

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,)
)
 Plaintiff,)
)
 v.) No. _____
)
 PUBLISHERS CLEARING HOUSE,)
)
 Defendant.)
)

COMPLAINT

This civil action is brought in the name of the State of Tennessee, by and through Paul G. Summers, Attorney General and Reporter for the State of Tennessee, (hereinafter “Attorney General”), pursuant to Tenn. Code Ann. § 47-18-108 of the Tennessee Consumer Protection Act of 1977 (hereinafter “the Act”), and any civil consumer protection law relating to sweepstakes promotions and practices. David A. McCollum, the Director of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance (“the Division”) and the Attorney General, acting pursuant to the Act (and in conjunction with other State Attorneys General as indicated in the multi-state Consent Judgment), have investigated some of the direct mail solicitation practices of Publishers Clearing House (“PCH” or “Defendant”). Upon completion of this multi-state investigation, the Division and the Attorney General have determined that certain promotional messages disseminated by Defendant, as described herein, in their direct mail solicitation materials constitute unfair and deceptive acts or practices affecting the conduct of trade or commerce in the State of Tennessee in violation of Tenn. Code Ann. §§ 47-18-104(a) and (b)(27), 47-18-120 and 47-18-124 and that this action is in the public interest.

I. JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to the provisions of Tenn. Code Ann. § 47-18-108. Venue is proper in Davidson County pursuant to Tenn. Code Ann. § 47-18-108(a)(3) because it is the county in which Defendant conducts, transacts or has transacted business. PCH has received ten day notice of this contemplated legal action as set forth in Tenn. Code Ann. § 47-18-108(a)(2). Local Counsel for PCH has agreed to accept service of process in this matter.

II. PARTIES

2. Defendant Publishers Clearing House is a New York partnership with its principal place of business located at 382 Channel Drive, Port Washington, New York 11050.

3. Pursuant to Tenn. Code Ann. § 47-18-108(a)(1) and 47-18-114, the Tennessee Consumer Protection Act allegations contained in this Complaint are commenced by the Attorney General at the request of David A. McCollum, Director of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance.

III. FACTUAL ALLEGATIONS

Based on their own investigation and the multi-state investigation of Defendant, the Division and the Attorney General allege the following:

4. Defendant is one of the largest direct mail solicitors in the United States in terms of sales, size and number of solicitations. Defendant uses sweepstakes solicitations to sell a wide assortment of merchandise, including but not limited to magazines, videotapes, coins and figurines. Defendant contacts consumers throughout the country, including Tennessee, through sweepstakes solicitations.

5. Defendant, in the normal course of business, has employed a procedure when mailing sweepstakes solicitations in order to target consumers, specifically active consumers, for additional mailings. This procedure accounts for a person's contact with the company, such as ordering merchandise, the frequency of those contacts (such as how many times a person has ordered), the type of merchandise ordered, and the dollar amount of those purchases. The more often consumers enter Defendant's sweepstakes, and order merchandise, the more likely they are to receive additional solicitations. Some consumers may receive as many as several solicitations per week from Defendant.

6. Using this procedure, Defendant identifies and targets consumers, whom it solicits frequently and continuously through numerous sweepstakes solicitations. In some solicitations, some consumers, directly or indirectly, may have been led to believe that: (a) they have won large cash and other valuable prizes; (b) Defendant, or its executives or employees, are personally aware of the specific consumers' status in the sweepstakes and is taking action to help ensure that such consumer will win large cash and other valuable prizes; and (c) persons placing orders are eligible to receive more prizes or entry opportunities or that purchasers have a better or increased chance of winning.

7. Defendant's sweepstakes solicitations are designed to induce the public to purchase merchandise offered by Defendant. In the context of such solicitations, the Division of Consumer Affairs and the Attorney General are of the opinion that Defendant has, directly or by implication, made numerous unfair, deceptive and/or misleading assertions, representations and statements to Tennessee consumers, including; but not limited to:

(A) Representing, directly or by implication, that consumers have won or will win a large cash prize in the PCH sweepstakes when, in fact, the consumers receiving the solicitation have not won such a prize.

(B) Representing, directly or by implication, that consumers will win a large cash prize by entering Defendant's sweepstakes when in fact such entries are simply included in a vast pool of returned sweepstakes entries.

(C) Representing, directly or by implication, that consumers are among a limited number of individuals who may be, or may become, the winner of the PCH sweepstakes, upon the satisfaction of some condition or the occurrence of some event or other contingency when in fact the consumers receiving the solicitation do not have an increased probability of winning and millions of consumers receive the same solicitation.

(D) Representing, directly or by implication, that consumers have an enhanced chance of winning Defendant's sweepstakes (i.e., consumers will win, are likely to win, are close to winning, or their winning is imminent), because other consumers have been eliminated from the sweepstakes or because the consumers belong to a select group,

when in when in fact the consumers receiving the solicitation do not have an increased probability of winning and millions of consumers receive the same solicitation.

(E) Representing, directly or by implication, that Defendants will or may award the PCH sweepstakes prize in a non-random manner or that consumers entries have, or will have, an advantage over other the timely entries when in fact the sweepstakes prize will be awarded in a random manner and all entries are simply included in a vast pool of returned sweepstakes entries.

(F) Misrepresenting, directly or by implication, that consumers will improve their chances of winning a prize in the PCH sweepstakes by purchasing merchandise offered by PCH. In fact, consumers do not improve their chances of winning a prize by purchasing merchandise. Entries included with a purchase are simply included in the vast pool of returned sweepstakes entries.

(G) Representing, directly or by implication, that consumers' likelihood of winning the Defendant's sweepstakes will be affected by consumers payment history with Defendant when in fact the sweepstakes prize will be awarded in a random manner and all entries are simply included in the vast pool of returned sweepstakes entries.

(H) Representing, directly or by implication, that consumers are guaranteed winners of a valuable "prize" in the PCH sweepstakes and providing an incentive for consumer to enter additional sweepstakes and make additional purchases, when in fact consumers have only "won" a nominal "prize" such as inexpensive costume jewelry or one dollar, the same "prize" won by millions of other consumers.

(I) Representing, directly or by implication, that consumers may enter the PCH sweepstakes without ordering merchandise but failing to disclose, clearly and conspicuously, how a consumer can do this and failing to provide a simple, straightforward and comparable method of doing so. In fact, in some instances, Defendant's disclosures about how a consumer can enter the PCH sweepstakes without ordering merchandise appear inconspicuously within large blocks of print on the back of the sweepstakes notifications.

(J) Misrepresenting, directly or by implication, that entering PCH's sweepstakes without making a purchase decreases a consumer's chances of winning by employing a format and presenting the instructions for the non-purchase mode of entry in a fashion that diminishes the likelihood that consumers will notice, understand or make use of such a mode of entry.

(K) Representing, directly or by implication, that a personal relationship exists between consumers and PCH executives or employees, real or fictitious, including, but not limited to, Dorothy Addeo, Dave Sayer and Robert Treller, and that the PCH executives or employees write letters and memoranda to individual consumers informing them of their impending status as winners of large cash prizes when, in fact, no personal relationship exists between PCH executives or employees and the consumers to whom these letters and memoranda are sent.

(L) Misrepresenting, directly or by implication, that deadlines exist for responding to sweepstakes solicitations that require consumers to return their entries within a short amount of time or forfeit their chances of winning a prize. Such representations may increase the likelihood that consumers will make hasty and uninformed purchasing decisions and thus suffer pecuniary losses.

(M) Misrepresenting, directly or by implication, the terms of the PCH sweepstakes, and the chances that consumers will win a prize in the PCH sweepstakes, because the sweepstakes rules are not clearly and conspicuously included in the various sweepstakes front sheets or in letters from Dorothy Addeo, Dave Sayer or Robert Treller on behalf of PCH to consumers. In numerous cases, the only place the text of rules and regulations, including the odds of winning and contest time lines, may be found is on the reverse side, in small type, of the merchandise order forms.

(N) Misrepresenting, directly or by implication, the defendant's business processes or winner selection methodologies. For example, representing, directly or by implication, the existence of fictitious conversations, meetings, events, or actions purporting to have taken place and relating specifically to consumers when such

conversations, meetings, events, or actions did not occur relative to the consumers receiving the solicitation.

IV. VIOLATIONS OF THE LAW

8. The foregoing assertions, representations and statements of fact allegedly made by Defendant, described and contained in paragraph 7, and made individually or in combination, in the opinion of the Attorney General and the Division, are unfair or deceptive acts or practices in violation of the Tennessee Consumer Protection Act of 1977. In the opinion of the Attorney General and the Division, such alleged unfair or deceptive acts and practices specifically violate Tenn. Code Ann. §§ 47-18-104(a), (b)(12), (b)(27), which prohibit (in pertinent part):

47-18-104(a) Unfair or deceptive acts or practices affecting the conduct of trade or commerce constitute unlawful acts or practice . . .

47-18-104(b) Without limiting the scope of subsection (a), the following unfair or deceptive acts or practices affecting the conduct of any trade or commerce are declared to be unlawful and in violation of this part:

(b)(12) Representing that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law;

(b)(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person;

Furthermore, in the opinion of the Attorney General and the Division, some of the foregoing assertions, representations and statements of fact allegedly made by Defendant, described and contained in paragraph 7, may violate Tenn. Code Ann. § 47-18-120, particularly (c) and (d), and Tenn. Code Ann. § 47-18-124, particularly (b) - (e), which are relevant to certain prize offers and may be applicable to Defendant's conduct. Tenn. Code Ann. §§ 47-18-120(g) and -124(h) make such violations unfair or deceptive acts or practices subject to civil penalties and remedy under the Act. When applicable, the provisions of Tenn. Code Ann. § 47-18-120(c) and (d), and Tenn. Code Ann. § 47-18-124 (b)-(e) read as:

47-18-120(c) In addition to and without limiting the prohibitions contained in §47-18-104, the following unfair or deceptive acts or practices are declared unlawful and in violation of this part:
(1) In an initial offer, the offeror is in violation of this part if the offeror:

(A) Fails to clearly and conspicuously state the name and street address of the person making the offer;

(B) Represents or leads a person to believe that, when, in fact, the offer is simply a promotional plan designed to make contact with prospective buyers, the person:

(i) Is or could be a winner, if those contacted have not won or are not eligible to win; or

(ii) Has been "selected" or is otherwise part of a select or special group eligible to receive, claim, or otherwise obtain the prize or travel service, if that person has not been selected or is not part of a select or special group;

(C) Represents that a person has won or could win a prize or travel service, has been selected or is eligible to win a prize or travel service or will receive a prize or travel service, if the receipt of the prize or travel service is conditioned upon listening to or observing a sales promotional effort, making a purchase, or incurring any monetary obligation, unless it is clearly and conspicuously disclosed, at the time of the initial offer of the prize or travel service, that an attempt will be made to induce the consumer or person to incur a monetary obligation, including the amount of that monetary obligation;

(D) Fails to clearly and conspicuously disclose the approximate verifiable retail price of each prize or travel service or the price of any product offered for sale through the promotional program in a position immediately adjacent to the item when the initial offer is in writing. The approximate verifiable retail value is the price at which the person offering the item can substantiate that a substantial number of these items have been sold at retail by another person or, in the event such substantiation is unavailable, an amount equal to no more than three (3) times the amount actually paid by the sponsor or promoter for the item;

(E) Fails to clearly and conspicuously disclose each item's approximate verifiable retail value as defined in subdivision (c)(1)(D), when the initial offer is verbal;

(F) Fails to clearly and conspicuously disclose, immediately adjacent to each prize or travel service offered, a statement of the odds, if applicable, in arabic numerals, of receiving each item offered, when the initial offer is in writing. The offeror must also give the recipient a written statement, if applicable, that those offers are not exclusive to the recipient and must disclose to such recipient whether all prizes or travel services will be awarded;

(G) Fails to clearly and conspicuously disclose a statement of odds, if applicable, in arabic numerals, of receiving each item offered if the initial offer is verbal. The offeror must make a verbal statement, if applicable, that those offers are not exclusive to the recipient and must disclose to such recipient whether all prizes or travel services will be awarded;

(H) Fails to give a recipient a general description of the types and

categories of restrictions, qualifications, or other conditions, that must be satisfied before the consumer or person is entitled to receive or use the prize or travel service, or product or service offered;

(I) Fails to give a recipient an approximate total of all costs, fees or other monetary obligations that must be satisfied before the consumer or person is entitled to receive or use the prize or travel service, or product or service offered; or

(J) Offers lottery winnings to a consumer in exchange for incurring a monetary obligation or making a purchase.

(2) Either in an initial offer or, at a minimum, before an offer can be accepted, the offeror is in violation of this part if the offeror fails to clearly and conspicuously state verbally, or in writing, and upon request, in writing:

(A) A general description of the types and categories of restrictions, qualifications, or other conditions, that must be satisfied before the consumer or person is entitled to receive or use the prize or travel service, or product or service offered, including:

(i) Any deadline by which the recipient must visit the business, attend or listen to the sales presentation or otherwise respond in order to receive the prize or travel service, or product or service offered;

(ii) The date or dates on or before which the prize or travel service, product or service offer will terminate or expire and, if applicable, when the prizes or travel services will be awarded;

(iii) The approximate duration of any mandatory sales presentation or tour, if applicable;

(iv) Any other conditions, such as minimum or maximum age qualifications, financial qualifications, or requirements that, if the recipient is married, both husband and wife must be present or respond in order to receive the prize or travel service, or product or service offered; and

(v) All other material rules, terms or restrictions governing an offer that is an inducement to purchase a good, service or other product or to otherwise incur a monetary obligation;

(B) The refund, exchange or return policies in regard to any offer that is an inducement to purchase a good, service or other product or otherwise incur a monetary obligation; and

(C) The approximate total of costs, fees or other monetary obligations that must be satisfied before the consumer or person is entitled to receive or use the prize or travel service, or product or service offered, including, but not limited to, handling, shipping, delivery, freight, postage or processing fees, charges or other additional costs for the receipt or use of the prize or travel service, or product or service offered. This subdivision shall not be construed to require that foreign tax rates be

included;

(3) The offeror is in violation of this part if at any time the offeror:

(A) Misrepresents in any manner the rules, terms, restrictions, monetary obligations or conditions of participation in the promotional plan or offer;

(B) Represents that the prize or travel service offered or any product offered for sale through the promotional plan possesses particular features or benefits if it does not, or is of a particular standard, quality, grade, or model, if it is of another;

(C) Makes the receipt of an offered prize or travel service contingent upon the consent of individual winners or recipients to allow their names to be used for promotional purposes, or failing to obtain the express written or oral consent of individual winners or recipients before their names are used for a promotional purpose in connection with a mailing to a third person;

(D) Refuses to disclose or make available, upon request, the names of the recipients of any prizes or travel services within the geographic area wherein the promotional offers were made; or

(E) Fails to award and distribute the prize or travel service, or product or service offered in accordance with the rules, terms and conditions of the offer or promotional program as stated or disclosed in accordance with the above subdivisions.

47-18-120(d)

(d) In addition to, and without limiting, the foregoing provisions:

(1) It is unlawful to require the consumer or person to incur any monetary obligation, excluding nominal postage costs, in order to determine which, if any, prize or travel service the consumer or person is offered or will receive, or to continue to remain eligible to receive any prize or travel service; and

(2) Acceptance of an offer is not valid and binding on the consumer unless all of the disclosures required in subsection (c) have been made;

47-18-124(b)

(b) No sponsor shall require a person in Tennessee to pay the sponsor money as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, nor shall a sponsor use any solicitation that creates the reasonable impression that a payment is required, unless the person has first received a written prize notice containing the information required in subsections (c) and (d).

47-18-124(c)

(c) A written prize notice must contain each of the following:

(1) The true name or names of the sponsor and the address of the sponsor's actual principal place of business;

(2) The retail value of each prize the person receiving the notice has been selected to receive or may be eligible to receive;

(3) A statement of the person's odds of receiving each prize identified in

the notice;

(4) Any requirement that the person pay shipping or handling fees or any other charges to obtain or use a prize, including the nature and amount of the charges;

(5) If receipt of the prize is subject to a restriction, a statement that a restriction applies, and a description of the restriction;

(6) Any limitations on eligibility; and

(7) If a sponsor represents that the person is a “winner,” is a “finalist,” has been “specially selected,” is in “first place,” or is otherwise among a limited group of persons with an enhanced likelihood of receiving a prize, the written prize notice must contain a statement of the maximum number of persons in the group or purported group with this enhanced likelihood of receiving a prize.

47-18-124(d)

(d) The information required by subsection (c) must be presented in the following form:

(1) The retail value and the statement of odds required under subdivisions (c)(2) and (3) must be stated in immediate proximity to each identification of a prize on the written notice, and must be in the same size and boldness of type as the reference to the prize;

(2) The statement of odds must include for each prize, the total number of prizes to be given away and the total number of written prize notices to be distributed. The number of prizes and written prize notices must be stated in Arabic numerals. The statement of odds must be in the following form:

“_____ (number of prizes) out of _____ notices distributed.”

(3) A statement required under subdivision (c)(7) must appear in immediate proximity to each representation that the person is among a group of persons with an enhanced likelihood of receiving a prize, and must be in the same size and boldness of type as the representation.

47-18-124(e)

(e) A sponsor who represents to a person that the person has been awarded a prize shall, not later than thirty (30) days after making the representation, provide the person with the prize, or with a voucher, certificate, or other document giving the person the unconditional right to receive the prize, or shall provide the person with either of the following items selected by the person:

(1) Any other prize listed in the written prize notice that is available and that is of equal or greater value; or

(2) The retail value of the prize, as stated in the written notice, in the form of cash, a money order, or a certified check.

V. MULTI-STATE NEGOTIATIONS AND SETTLEMENT

9. Through the multi-state investigations and negotiations, numerous “Settling States,”

including Tennessee as defined in the Consent Judgment¹, have agreed with PCH to resolve litigation and disputes under civil consumer protection acts related to PCH's sweepstake promotions and practices through entry of consent judgments, such as will be presented by parties to this Court for approval. The parties agree and consent to the general provisions, injunctive terms, monetary provisions, administrative provisions and other terms of the Consent Judgment in this matter and request the Court to approve and order entry of the Consent Judgment to resolve this matter.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, THE STATE OF TENNESSEE PRAYS:

(1) That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-108, and 47-18-116.

(2) That this Court approve and order entry of the Consent Judgment, agreed to and presented by the parties, to resolve this matter.

(3) That, as set forth in the Consent Judgment, this Court enjoin Defendant from engaging in certain acts or practices, which the State alleged are in violation of the Tennessee Consumer Protection Act of 1977.

(4) That, pursuant to Tenn. Code Ann. § 47-18-108(b) and as set forth in the Consent Judgment, this Court approve the monetary payments by PCH, which includes:

(a) Pursuant to Consent Judgment Paragraph 53, payment by PCH of Nineteen Million Dollars (\$19,000,000.00) to be used collectively by all of the Settling States for multi-state pro rata consumer restitution;

(b) Pursuant to Consent Judgment Paragraph 54, payment by PCH of One Million Dollars (\$1,000,000.00) to be used collectively by all of the Settling States for administering multi-state consumer restitution;

(c) Pursuant to Consent Judgment Paragraph 55, payment of PCH of One Million Dollars (\$1,000,000.00) to be used collectively by all of the Settling States for civil

¹The “**Settling States**” are: Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, West Virginia, and Wisconsin.

penalties (by separate agreement of the Settling States, this total amount paid is to be divided equally among the Settling States, with Tennessee to receive \$38,461.54 for its General Fund);

(d) Pursuant to Consent Judgment Paragraph 56, payment by PCH of Thirteen Million Dollars (\$13,000,000.00) which shall be applied collectively by all of the Settling States (as the Settling States agree separately from PCH, as set forth in Consent Judgment Paragraph 61) to consumer protection efforts, as well as in reimbursement of investigative and litigation costs, attorneys fees or for any other lawful purpose. (It is further requested that this Court approve that any money provided to the State of Tennessee pursuant to Consent Judgment Paragraph 56 and 61, shall be allocated one-half to the State's General Fund and one-half to consumer protection purposes at the sole discretion of the Tennessee Attorney General. Moreover, it is requested that this Court authorize the Tennessee Attorney General in his discretion to participate in any multi-state Enforcement Fund, established pursuant to Consent Judgment Paragraph 56.)

(5) That all costs in this cause be taxed against Defendant.

(6) That this Court grant Plaintiff such relief as it deems just and proper to enter and

enforce the Consent Judgment.

Respectfully submitted,

PAUL G. SUMMERS
Attorney General and Reporter
BPR. No. 6285

STEVEN A. HART
Special Counsel
Office of the Attorney General
BPR No. 7050

DANA M. AUSBROOKS
Assistant Attorney General
BPR No. 20625
Office of the Attorney General
P.O. Box 20207
Nashville, Tennessee 37202
(615) 532-5512